

State Electronic Payment Processing Services DOA-SITSD-2020-0124JT

THIS CONTRACT is entered into by and between the State of Montana, State Information Technology Services Division, (State), whose address and phone number are 125 North Roberts, Helena, MT 59620, 406444-2700 and **PayZang** (Contractor), whose address and phone number are 860 East 4500 South, Suite 315, Salt Lake City, UT 84107 and (800) 838-8651.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is upon contract execution, through December 31, 2023, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

1.2 Contract Renewal. State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of ten years.

2. COST ADJUSTMENTS

2.1 Cost Increase by Mutual Agreement. After the Contract's initial term and if State agrees to a renewal, the parties may agree upon a cost increase. State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES

Contractor shall provide State electronic payment processing services to support electronic government (eGovernment) services to the citizens and businesses of Montana on behalf of Montana state agencies and political subdivisions as described in RFP#DOA-RFP-2020-0124JT and Contractor's response to #DOA-RFP2020-0124JT.

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the Services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. State's acceptance of Services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any Services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as Services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the services to be provided, State shall pay Contractor a fixed fee as follows:

Debit/Credit Card Transaction Fee- Markup- **\$0.19** eCheck
Transaction Fee- Markup- **\$0.19**

5.2 Withholding of Payment. State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

5.3 Payment Terms. Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

5.4 Reference to Contract. The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to pay the invoice.

6. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to State Procurement Bureau prior to the award of this Contract, the prices, terms, and conditions of this Contract will be offered to these public procurement units. However, State Procurement Bureau makes no guarantee of any public procurement unit participation in this Contract.

7. NON-EXCLUSIVE CONTRACT

The intent of this Contract is to provide state agencies with an expedited means of procuring services. This Contract is for the convenience of state agencies and is considered by State to be a "Non-exclusive" use contract. Therefore, an agency may obtain these services from sources other than the Contractor as long as the agency complies with Title 18, MCA, and its delegation agreement, and the agency has received approval as required by the State of Montana's Chief Information Officer. State does not guarantee any usage, and this Contract creates no obligation on the part of the State, a state agency, or a political subdivision to obtain services within the scope of this Contract from the Contractor.

11. ACCESS AND RETENTION OF RECORDS

11.1 Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under section 27, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

11.2 Retention Period. Contractor shall create and retain all records supporting the Services rendered for a period of eight years after either the completion date of this Contract or termination of the Contract.

12. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

13. THIRD PARTY SOFTWARE

13.1 Third Party Software and Licenses. In the event Contractor provides any third party software ("Third Party Software"), including Open Source Software as defined in Section 13.2 (Open Source Software), to State in connection with this Agreement for which State would be obligated to accept and be bound by any third party terms and conditions, the following shall apply: (a) Contractor shall specifically identify in writing all Third Party Software in Schedule A; and (b) Contractor shall attach to Schedule A written copies of all third party license agreements applicable to State.

13.2 Open Source Software. "Open Source Software" means any software, programming, or other intellectual property that is subject to the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses or any agreement with terms requiring the intellectual property to be redistributable. With regard to (a) Open Source Software, (b) any Third Party Software that Contractor fails to identify in the relevant Order Document, and (c) any third party software embedded in the Licensed Software for which State is not required to accept any third party terms and conditions, all such software shall be considered, as appropriate, part of and included in the definition of Licensed Software and subject to all warranties, indemnities, and other requirements of this Agreement, including scope of license and maintenance and support, relating to the Licensed Software.

13.3 Third Party Software Warranty. Contractor warrants that (a) it has the right to license any Third Party Software licensed to State under this Agreement; (b) to the best of Contractor's knowledge, the Third Party Software does not, and the use of the Third Party Software by State as contemplated by this Agreement will not, infringe any Intellectual Property Rights of any third party; and (c) unless specifically provided otherwise herein, State shall have no obligation to pay any third party any fees, royalties, or other payments for State's use of any Third Party Software in accordance with the terms of this Agreement. Contractor shall support and maintain all Third-Party Software to the same extent as the Licensed Software.

14. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

To the extent permitted by law, Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, settlements, expenses or fees, including the reasonable cost of defense thereof and attorney fees:

- a. arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or part from the intentional, willful, grossly negligent, or negligent acts or omissions of Contractor and/or its agents, employees, representatives, assigns, and subcontractors; and
- b. for the cost of: (i) investigation and forensic analysis, (ii) restoration of data, (iii) providing any notice required by Mont. Code Ann. § 2-6-1503 or other applicable state or federal law, (iv) identity theft protection services, (v) legal fees and regulatory fines, and (vi) third party claims and losses resulting or allegedly resulting in whole or part from a data incident, except to the extent a data incident is caused by the State.

Contractor shall have the right to control the defense of indemnified claim.

15. LIMITATION OF LIABILITY

a. General Limitation. Except as provided in Section 15.b. Exceptions, Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages, and Contractor's liability for contract damages is limited to direct damages and further to no more than the greater of \$3,000,000 or the fees paid to contractor less interchange and bank processing costs over the 12 month period preceding the claim.

b. Exceptions. Contractor's liability for damage or loss caused by injury to persons or tangible property or related to intellectual property indemnification or State notification requirements in connection with a breach of system security is not subject to a cap on the amount of damages. Contractor's liability for a breach of system security or a breach of confidentiality rights and obligations is not limited to direct damages and may include special, incidental, consequential, or indirect damages, and Contractor's liability for such damages is limited to the lesser of (i) three times the fees paid to contractor over the 12 month period preceding the claim or (ii) the total amount of coverage available pursuant to Contractor's insurance coverage. If Contractor fails to maintain the contractually required insurance, in no event shall Contractor be liable for an amount less than the coverage amount that would have been provided if Contractor had maintained such insurance.

16. REQUIRED INSURANCE

16.1 General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

16.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

16.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

16.4 Specific Requirements for Crime. Contractor shall purchase and maintain a commercial crime insurance policy in the amount of \$1,000,000 per occurrence that provides coverage for fidelity, faithful performance, employee dishonesty, forgery or alteration, burglary and theft of money and securities (inside and outside premises), computer fraud, and other dishonest acts of any employee, agent, or independent contractor whose duties are to receive, handle, or have custody of money, checks, securities, electronic funds, or account for supplies or other property. Coverage is to include client coverage endorsement or name the State as a loss payee. The coverage must apply to any individual that certifies, signs, or countersigns checks, drafts, warrants, vouchers, orders, electronic documents, or other documents and who provides for the

disbursement or delivery (including electronic transmission) of money, funds, securities, supplies, or other property. This insurance must remain in effect for the entire contract period.

16.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

16.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

16.7 Specific Requirements for Cyber/Data Information Security Insurance. The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$5,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

17. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

18. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the

purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

19. COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the contract liaison. Declaration forms can be found at: <http://spb.mt.gov/Laws-Rules>.

Contractor shall also annually submit a disclosure form to the contract liaison as required. Disclosure forms can be found at: <http://spb.mt.gov/Laws-Rules>.

All disclosures must be submitted to (insert agency contact information), for reporting on <https://transparency.mt.gov/>. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

20. DISABILITY ACCOMMODATIONS

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

21. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

22. INTELLECTUAL PROPERTY/OWNERSHIP

22.1 Mutual Use. Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

22.2 Title and Ownership Rights. State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

22.3 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

22.4 Copy of Work Product. Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

22.5 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the Services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-Existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such PreExisting Materials remain embedded in the Work Product. Except as otherwise provided for in Section 22.3, Ownership of Work Product, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

23. PATENT AND COPYRIGHT PROTECTION

23.1 Third-Party Claim. If a third party makes a claim against State that the products furnished under this Contract infringe upon or violate any patent or copyright, State shall promptly notify Contractor. Contractor shall defend such claim in State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

23.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of

the above options can be accomplished, or if the use of such product by State shall be prevented by injunction, State will determine whether the Contract has been breached.

25. CONTRACT OVERSIGHT

25.1 CIO Oversight. The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order.

25.2 Right to Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

25.3 Stop Work Order. State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract shall be amended in writing accordingly.

25.4 System Security. Contractor shall ensure systems delivered under this Agreement are adequately secure. For purposes of this Agreement, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology. The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, Contractor shall provide reasonable proof, through independent audit reports, that the system specified under this Agreement meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

25.5 Physical Access. Contractor represents and warrants that it has established and during the Term it will at all times enforce:

- (a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;
- (b) Appropriate facility entry controls limiting physical access to systems that store or process data;
- (c) Processes to ensure access to facilities is monitored and is restricted on a "need to know" basis;
- (d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.

25.6 Prohibited Activities and Spoofing. Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the State's network or interfere or attempt to interfere with the State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State's network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State's network or systems to any account or information technology resource not belonging to Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State's domain.

26. STATE DATA AND OTHER CONFIDENTIAL INFORMATION

26.1 State Data and Confidentiality Definitions. The capitalized terms used in Section 26 have the meaning set forth in this Section 26.1 or the meaning assigned elsewhere in this Contract.

"Cardholder Data" has the meaning stated in the Payment Card Industry Data Security Standard ("PCI DSS").

"Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), that is (i) marked in writing as "confidential" or by a similar designation, (ii) any other information that is treated as confidential by the Disclosing Party and would reasonably be understood to be confidential, whether or not so marked, and, (iii) as provided in 2-6-1002(1), MCA, information that is accorded confidential status or is prohibited from disclosure as provided by applicable law, including information that is constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure, necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state, and designated as confidential by statute or through judicial decisions, findings, or orders.

"Contractor Personnel" means employees, representatives, contractors, subcontractors, assigns, and agents of Contractor and its subcontractors' employees, representatives, contractors, subcontractors, assigns and agents.

"Data Incident" means any event or occurrence when State Personal Data is lost, stolen, disclosed without authorization, or accessed without authorization.

"Operating Manual" means the operating procedures manual for the Services.

"Personally Identifiable Information (PII)" means information that can be used to distinguish or trace an individual's or person's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual or person. PII includes information included in the definition of "personal information" in 2-6-1501, MCA.

"Privacy Law" means a law of the United States, the State of Montana, or another state or a standard imposed by a self-regulatory organization that applies to the processing of Personally Identifiable Information. A Privacy Law includes (i) the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., (ii) HIPAA, HITECH and the HIPAA Rules, (iii) the Public Health Service Act, 42 U.S.C. §§ 290dd-3, 290dee-3, including 42 C.F.R. Part 2; (iv) provisions governing the "meaningful use" of electronic health records under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010,

including 42 C.F.R. Part 495; (v) the Payment Card Industry Data Security Standard ("PCI-DSS") and all rules and operating regulations of the credit card associations (such as Visa, MasterCard, American Express or Discover Network); (vi) the Federal Trade Commission Act, 15 U.S.C. § 41, et seq.; (vii) the federal Telephone Consumer Protection Act; and each of (i) through (vii) as amended from time to time; and (y) all implementing regulations, regulatory guidance and requirements and contractual requirements relating to privacy and data security pursuant to all such laws and standards, each as amended from time to time.

"State Data" means any data or information of or regarding State or any state agency that is provided to or obtained by Contractor in connection with the negotiation and execution of the Contract or the performance of Contractor's obligations under the Contract, including data and information with respect to the constituency, customer, operations, facilities, products, rates, regulatory compliance, competitors, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of State or any state agency. State Data also means any data or information (i) created, generated, collected or processed by Contractor in the performance of its obligations under the Contract, including data processing input and output, service level measurements, asset information, reports, third party service and product agreements, and contract charges, or (ii) that resides in or is accessed or transferred through software, equipment or systems provided, operated, supported, or used by Contractor in connection with the Services, as well as information derived from this data and information.

The following is excluded from the definition of State Data to the extent not required to be provided or otherwise made available to State under this Contract: (a) financial/accounting information of Contractor, its affiliates or subcontractors, (b) information created by Contractor to measure the productivity and efficiency of the Services and/or to improve the processes and procedures used by in the performance of the Services, and (c) human resources and personnel information of Contractor, its affiliates or subcontractors.

"State Personal Data" means State Data that (a) any state agency discloses that consists of personal Confidential Information, (b) is Personally Identifiable Information, (c) is subject to PCI DSS or any Privacy Law or (c) is information that identifies any consumer served by the State or constituent agencies, in accordance with applicable federal and state laws and other applicable rules.

"State Standard(s)" means (a) the standards, policies, practices, processes, procedures, and controls to be adhered to and enforced by Contractor in the performance of the Services, including those identified in the solicitation and Contractor's response; (b) the associated information technology architectures, standards, products, and systems to be provided, operated, managed, supported, and used by Contractor in connection therewith; and (c) the State of Montana Information Security Policy, its appendices, and the information technology policies, procedures, and standards referenced therein.

26.2 Confidentiality.

(a) **Confidential Information.** Contractor and State acknowledge that each may possess Confidential Information that has commercial, proprietary, or other value that is not generally available to the public, subject to Montana's constitution and public record laws.

(b) Disclosure of Confidential Information.

- (i) The Disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the Receiving Party, subject to the confidentiality obligations contained in this Section 26.2.
- (ii) During the term of this Contract and at all times thereafter as specified in Section 26.7, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Contract and for no other purposes, (B) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such

Confidential Information, and (C) shall not disclose, provide, disseminate, or otherwise make available any Confidential Information of the Disclosing Party to any third party without the express written permission of the Disclosing Party, unless expressly permitted by Sections 26.2(b)(iii) and 26.2(b)(iv) below or elsewhere in this Contract. Subject to the requirements of Sections 26.3(b) and 26.4, as applicable, each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. (iii) The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors, and agents (including legislative auditors and security personnel in the case of State) provided that (A) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Contract or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or entity that is no less stringent than that set forth in this Section 26.2 and (C) such disclosure is not in violation of law, the Operating Manual, or applicable State Standards. The Receiving Party assumes full responsibility for the acts or omissions of any person or entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Contract. (iv) The Receiving Party may disclose Confidential Information of the Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request, the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use reasonable efforts to cooperate with the Disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment shall be accorded such Confidential Information. (v) Unless expressly permitted by this Contract, neither party shall (A) make any use or copies of the Confidential Information of the other party except as expressly contemplated by this Contract, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other party, (C) sell, assign, transfer, lease, encumber or otherwise dispose of or disclose the Confidential Information of the other party to third parties or commercially exploit, or permit a third party to commercially exploit, such information, including through derivative works, or (D) refuse for any reason (including a default or material breach of this Contract by the other party) to promptly provide the other party's Confidential Information (including any copies thereof) to the other party if requested to do so. (vi) Notwithstanding the provisions of this Section 26.2(b), State may disclose Confidential Information relating to the financial or operational terms of this Contract and/or Contractor's performance hereunder (e.g., applicable service levels and measurements of Contractor's performance with respect to such service levels) in connection with the solicitation of proposals for or the procurement of the same or similar services from prospective State contractors provided, State may not disclose Confidential Information related to Contractor's processes and procedures without first securing an obligation from prospective State contractors to keep such information confidential.

(vii) Notwithstanding the provisions of this Section 26.2(b), the parties acknowledge and agree that each party may be required to disclose Confidential Information pursuant to the Montana Constitution, Montana public record laws, and other applicable laws.

(viii) Each party shall take all necessary steps to cause its employees, contractors and subcontractors to comply with the provisions of this Section 26.

- (c) **Exclusions.** Notwithstanding the above, Section 26.2(b) shall not apply to any particular information which the Receiving Party can demonstrate: (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it; (iv) is received from a third party having a lawful right to disclose such information; or (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. The exclusions in this Section 26.2(c) shall not apply to State Personal Data.
- (d) **Loss of Confidential Information.** Each party shall (i) immediately notify the other party of any possession, use, knowledge, disclosure, or loss of such other party's Confidential Information in contravention of this Contract, (ii) promptly furnish to the other party all known details and assist such other party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other party in any investigation or litigation deemed necessary by such other party to protect its rights and (iv) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Contract. Each party shall bear any costs it incurs in complying with this Section 26.2(d).
- (e) **No Implied Rights.** Nothing contained in this Section 26.2 shall be construed as obligating a party to disclose its Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any rights or license to any Confidential Information of the other party.
- (f) **Return or Destruction of Confidential Information.** Each party shall securely store the other party's Confidential Information until such Confidential Information is returned or destroyed as described in this section. Except as provided with respect to records of Contract performance subject to retention as provided in Section 11 – Access and Retention of Records, each party shall destroy all documentation in any medium that contains, refers to or relates to the other party's Confidential Information (or the portion of such Confidential Information specified by the other party) or shall return such documentation to the other party or its designee, in the format and on the media reasonably prescribed by the other party, as follows: (i) within thirty (30) days of the expiration or termination of this Contract and completion of each party's obligations hereunder, including, with respect to Contractor, all periods of transition assistance services described in Section 34 – Transition Assistance requested by State; and (ii) with respect to State Confidential Information, at any time State requests destruction of State Confidential Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Contractor to perform its obligations under this Contract as identified by State or pursuant to the Operating Manual. Such documentation shall include all copies of a party's Confidential Information in the other party's possession or under the other party's control. The party returning or destroying the other party's Confidential Information shall deliver to the other party written certification of its compliance with this paragraph signed by an authorized representative of such party. Notwithstanding the foregoing, either party may retain one (1) copy of the other party's Confidential Information in its legal department as and to the extent required to comply with

applicable laws or enforce its rights under this Contract; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute. In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.

(g) **Transfer of State Confidential Information.** Contractor shall not transfer State Confidential Information to any other locations, nor change the locations for storage and processing of such State Confidential Information, except with the express written consent of State, which State may withhold in its sole discretion.

26.3 State Data. Nothing in this Section 26.3 is intended to limit the obligations of Contractor under Sections 26.2 and 26.4 of this Contract with respect to the Confidential Information addressed in such sections.

(a) **Ownership of State Data.** State Data shall be and shall remain, as between the Parties, the property of State and/or the applicable state agencies. Contractor shall not sell, assign, lease, or encumber State Data. Contractor shall not disclose to or allow access by third parties to State Data, unless expressly provided for in this Contract. Contractor shall not commercially exploit, or permit a third party to commercially exploit, State Data on behalf of Contractor or any other person or entity. State Data shall be made available to State, upon its request, in the form and format as reasonably requested by State.

(b) **Safeguarding of State Data.**

(i) Contractor shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of State Data in the possession of Contractor, and which shall be (A) no less rigorous than those maintained (or required to be maintained) by State or the relevant state agency (or required or implemented by State or the relevant state agency in the future to the extent deemed necessary by State or such state agency and communicated to Contractor), (B) no less rigorous than those maintained by Contractor for its own information of a similar nature, (C) no less rigorous than accepted security standards in the industry (including but not limited to the Payment Card Industry's Data Security Standard (PCI DSS)), and (D) (without limiting the Parties' obligations under Section 18 – Compliance with Laws) compliant with all applicable State Rules and State Standards, including the requirements of State's and the relevant state agency's then-current privacy, security and records retention policies (such as Internal Revenue Service guidelines contained within IRS Publication 1075 (found at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>)). Contractor acknowledges and agrees that certain state agencies are legally prohibited from disclosing or allowing access to certain State Data, including disclosures to and access by the State Information Technology Services Division (SITSD), other state agencies and Contractor. The content and implementation of such data security program and associated technical, organizational and security measures shall be fully documented by Contractor in the Operating Manual, including the process state agencies shall follow to identify State Data they are legally prohibited from disclosing and the confidentiality requirements of state agencies. Contractor shall permit legislative auditors and State security personnel to review such documentation and/or to inspect Contractor's compliance with these provisions in accordance with this Section 26.3(b)(i). State acknowledges that elements of Contractor's data security program involve customized services offerings regarding the specific means and levels of security protection selected by a customer (regarding, for example, desired levels of host and network intrusion detection services, methods for monitoring and limiting access to data, extent of desired encryption, etc.), and State agrees that the specific services selected by State pursuant to this Contract

establish the contract requirements with respect to those activities, provided that any requirement that contradicts the provisions of this Contract must be mutually agreed to by the parties in writing.

(ii) Under no circumstances shall Contractor make any changes that materially weaken any technical, organizational or security measures in place to safeguard State Data, or result in Contractor's failure to meet any of the minimum standards set forth above without State's prior approval. Under no circumstances shall Contractor or Contractor Personnel attempt to access or allow access to State Data that is not required for the performance of Contractor's obligations or otherwise permitted under this Contract.

(iii) Subject to any restriction in contracts with Contractor's other customers, Contractor shall regularly advise State of data security practices, procedures, and safeguards in effect for other Contractor customers that, in Contractor's reasonable judgment, are (A) relevant to the Services being provided under this Contract and (B) define or exceed relevant industry standards relevant to the Services. If requested by State, Contractor shall, to the extent reasonably practicable and subject to the change control procedures mutually agreed to by State and Contractor, implement such enhanced practices, procedures and safeguards with respect to its provision of Services to State hereunder.

(iv) State shall have the right to establish backup security for any State Data and to keep backup and files for State Data in its possession if it chooses. Contractor shall provide State with downloads of State Data, as requested and directed by State, to enable State to maintain such backup copies.

(v) In the event Contractor discovers or is notified of a breach or potential breach of security relating to

State Data, Contractor shall immediately (A) notify State of such breach or potential breach, (B) investigate (with State's participation if so desired by State) such breach or potential breach and perform a risk assessment, root cause analysis and corrective action plan thereon, (C) provide a written report to State of such risk assessment, root cause analysis and action plan, (D) remediate the effects of such breach or potential breach of security as soon as practicable or coordinate such remediation if Contractor does not have responsibility for the matters which are the source of the breach or potential breach, and (E) provide State with reasonable assurances that such breach or potential breach shall not recur.

(vi) To the extent Contractor removes State Data from any media that is taken out of service that is under Contractor's control, Contractor shall destroy or securely erase such media in accordance with the Operating Manual. Under no circumstances shall Contractor use or re-use media on which State Data has been stored to store data of any other customer of Contractor or to deliver data to a third party, including another Contractor customer, unless such State Data has been securely erased in accordance with the Operating Manual.

(c) Transfer, Return or Destruction of State Data. Notwithstanding the expiration or termination of the Contract, Contractor shall securely maintain and store State Data until such State Data is transferred, returned or destroyed as described in this section. Contractor shall maintain and store State Data for not less than 180 days following the date of expiration or termination of the Contract. Contractor's obligations to transfer, return, or destroy State Data extends to all documentation in any medium that contains, refers to or relates to State Data. Contractor shall return or transfer State Data to the State or the State's designee, in the format and on the media reasonably prescribed by the State, as follows: (i) within thirty (30) days of the expiration or termination of this Contract and completion of each party's obligations hereunder, including, with respect to Contractor, all periods of transition assistance services described in Section 34 – Transition Assistance requested by State; and (ii) at any time State requests transfer or return of State Data. Within thirty (30) days of the date that State Data is no longer required by Contractor to perform its obligations under this Contract as identified by State or pursuant to the Operating Manual Contractor shall destroy all State Data in any medium in Contractor's possession or control. Contractor shall deliver to the State written certification of its compliance with this paragraph signed by an authorized representative of Contractor.

26.4 State Personal Data.

In addition to the provisions of Sections 26.2 and 26.3, the following privacy and data protection provisions shall apply to State Personal Data.

(a) Contractor shall hold any State Personal Data that it receives in confidence and in compliance with (i) Contractor's obligations under this Contract, the Exhibits and Attachments hereto and the Operating Manual and (ii) subject to Section 18, all laws regarding its use of and access to such State Personal Data.

(b) Contractor agrees that Contractor and Contractor Personnel shall not use any State Personal Data for any purpose other than the fulfillment of the terms and conditions of this Contract. Contractor shall not process or disseminate State Personal Data to any third party or transfer State Personal Data without the approval of State unless expressly provided for in this Contract. Contractor shall take appropriate action to cause:

(i) Any Contractor Personnel who have access to State Personal Data pursuant to this Contract to be advised of, and comply with, the terms and conditions of this Section 26.4; and

(ii) Any Contractor Personnel who have access to State Personal Data to be trained regarding their handling of such State Personal Data.

Contractor shall be responsible for any failure of Contractor Personnel to comply with the terms and conditions regarding State Personal Data set forth in this Section 26.4.

(c) When interfacing with State or the applicable state agency regarding State Personal Data, Contractor shall only disclose or transmit State Personal Data to those State or state agency employees and State contractors authorized by the State Contract Manager specified in Section 32.1 – Contract Manager or identified in the Operating Manual.

(d) Data Incident. The following apply to a Data Incident involving State Personal Data.

(i) Notice to State. Contractor shall notify State as soon as it is aware of a Data Incident, and in all cases no later than 24 hours after Contractor has knowledge of a Data Incident. The Data Incident should be communicated to the State's Contract Manager.

(ii) Statutory Data Incident Notification Requirements. In addition to providing notice as specified in Section 26.4(d)(i), if a Data Incident occurs, Contractor shall provide State and affected persons notification pursuant to 2-6-1503, MCA.

(iii) Contractor Data Incident Response. Contractor shall take commercially reasonable measures to address the Data Incident in a timely manner. At minimum, Contractor shall: (1) cooperate with State as reasonably requested by State to investigate and resolve the Data Incident; (2) promptly implement necessary remedial measures, if necessary; and (3) document and provide to State responsive actions taken related to the Data Incident, including any post-incident review of events and actions taken to make changes in business practices in providing the Services, if necessary.

(iv) Contractor Responsibilities Regarding Data Incident. If a Data Incident is attributable to a breach by Contractor or Contractor Personnel of Contractor's obligations under this Contract with respect to State Personal Data, Contractor shall bear (A) the costs incurred by Contractor in complying with its legal obligations relating to such breach and (B) in addition to any other damages for which Contractor may be liable for under this Contract (except to the extent such Data Incident is due to State's failure to provide the level of encryption required under applicable law to protect such State Personal Data), the following costs incurred by State or the state agency in complying with their legal obligations relating to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) the cost of providing such affected individuals with credit monitoring services for thirty-six (36) months, (3) creating a call center support for such affected individuals for thirty (30) days, (4) any related governmental fees or fines assessed against State or state agencies, and (5) any other losses for which Contractor would be liable under Section 14 – Defense, Indemnification / Hold Harmless.

26.5 File Access.

State shall have secure access to, and the right to review and retain the entirety of, all State

Confidential Information in the possession or control of Contractor. Such access shall be provided to State in near-real time and by the means and in the format reasonably requested by State. At no time shall any of such files or other materials or information be stored or held in a form or manner not readily accessible to State in this manner. Contractor shall provide to the State Contract Manager specified in Section 32.1 – Contract Manager, or his or her designee, all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon his or her request, including equipment and software keys and such information as to format, encryption (if any) and any other specification or information necessary for State to retrieve, read, revise and/or maintain such files and information. Upon the request of the State Contract Manager specified in Section 32.1 – Contract Manager, or his or her designee, Contractor shall confirm that, to the best of its knowledge, all files and other information provided to State are complete and that no material element, amount, or other fraction of such files or other information to which State may request access or review has been deleted, withheld, disguised or encoded in a manner inconsistent with the purposes and intent of providing full and complete access to State as contemplated by this Contract.

26.6 Cardholder Data.

Contractor shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") with respect to Cardholder Data as defined therein. Contractor shall have access to Cardholder Data only for the limited purpose of performing the Services or as specifically agreed to by Visa, MasterCard, American Express, and/or Discover (collectively, the "Issuers"), State, or as required by applicable law. In the event of a breach or intrusion of, or otherwise unauthorized access to, Cardholder Data stored by or for Contractor, Contractor shall immediately notify State, in the manner required, and provide State or its designee, the Issuers, and the acquiring financial institution and their respective designees access to Contractor's facilities and all pertinent records to conduct a review of Contractor's compliance with these requirements. Contractor shall maintain appropriate business continuity procedures and systems to ensure security of Cardholder Data in the event of a disruption, disaster, or failure of Contractor's primary data systems which involve a risk to Cardholder Data. Contractor shall provide access to its security systems and procedures, as reasonably requested by State or its designee. Contractor shall cooperate fully with any reviews of their facilities and records provided for in this Section 26.6. Contractor will comply with any assessment, validation, or verification of PCI DSS rules and regulations.

26.7 Survival of Confidentiality Obligations.

The limitations on use and disclosure by Contractor and Contractor Personnel under this Section 26 with respect to State Personal Data shall survive the expiration or termination of this Contract and shall be perpetual and (b) each party's confidentiality obligations under this Contract shall continue for any period required by applicable law, or in the absence of a required period for seven (7) years after the expiration or termination of this Contract, or, if sooner, until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the receiving party.

27. CONTRACT TERMINATION

27.1 State's Termination for Cause with Notice to Cure Requirement. State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the Services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

27.2 Contractor's Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified

period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

27.3 Reduction of Funding. State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

27.4 Noncompliance with Department of Administration Requirements. The Department of Administration, under the provisions of 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, State will pay for products and Services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

28. EVENT OF BREACH – REMEDIES

28.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or Services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching Section 33.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

28.2 Event of Breach by State. State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

28.3 Actions in Event of Breach. Upon Contractor's material breach, State may:

- Terminate this Contract under Section 27.1, Termination for Cause and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under section 27.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

29. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

30. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

31. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or Services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

32. LIAISONS AND SERVICE OF NOTICES

32.1 Contract Manager. State's contract manager identified below is State's single point of contact and shall perform all contract management under 2-17-512, MCA, on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's contract manager.

32.2 Notifications. State's contract manager and Contractor's contract manager may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing.

33. MEETINGS

33.1 Technical or Contractual Problems. Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

33.2 Progress Meetings. During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

33.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of Services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

33.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

34. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for no less than 12 months after the expiration or termination of this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

35. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 14, Defense, Indemnification/Hold Harmless.

36. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

37. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

38. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

39. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

40. SURVIVAL

The rights and obligations of the parties which, by their nature must survive termination or expiration of this Contract in order to achieve its fundamental purposes, include without limitation, the provisions of the following sections: CONFIDENTIALITY RIGHTS AND OBLIGATIONS, WARRANTIES, HOLD HARMLESS/INDEMNIFICATION, INTELLECTUAL PROPERTY INDEMNIFICATION, LIMITATION OF LIABILITY, CHOICE OF LAW AND VENUE, and TRANSITION ASSISTANCE. All such sections shall survive any termination of this Contract.

41. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

41.1 Contract. This Contract consists of twenty (20) numbered pages, any Attachments as required, Solicitation #DOA-RFP-2020-0124JT as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

41.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

42. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

43. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

STATE OF MONTANA
Department of Administration
State Information Technology Services Division
125 N. Roberts Street
Helena, MT 59620

PAYZANG
860 East 4500 South
Suite 315
Salt Lake City, UT 84107
FEDERAL ID # 455425410

BY: Tim Bottenfield CIO
(Name/Title)

BY: Christopher Fleisch Partner
(Name/Title)

DocuSigned by:
Tim Bottenfield
5618EC5F091042A...

(Signature)

DocuSigned by:
Christopher Fleisch
F3153F269F8E4A0...

(Signature)

DATE: 11/6/2020

DATE: 11/6/2020

Approved as to Legal Content:

DocuSigned by:
Don Harris
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11/6/2020
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:
John Thomas
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11/6/2020
Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

DocuSigned by:
Tim Bottenfield
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11/6/2020
Chief Information Officer (Date)
Department of Administration